IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 27 OF 2006

Shri Uday P. Desai,
Married, major in age,
Businessman, residing at
C/o Mineira de Rapila
Dessai Nigadikar Minerals Pvt. Ltd.
Behind Pandawas Chapel,
Aquem, Margao,
Salcete, Goa. ..... Appellant

Versus

1. Shri Vishwas R. Naik,
married, major in age,
residing at Anandwadi, Shiroda,,
Ponda, Goa.

2.The State of Goa,
represented by Public
Prosecutor. ..... Respondents

Mr. Arun Bras De Sa, Advocate for the Appellant.

Mr. R. G. Ramani, Advocate for Respondent no.1.

CORAM: N. A. BRITTO, J.

DATE: 13th December, 2006.

ORAL JUDGMENT

Heard learned Counsel on behalf of both the parties.

2. This revision is filed by the accused, who shall be referred to as such hereinafter, against the Order dated 30.11.2005 of the learned Sessions Judge,

upholding the Order dated 28.02.2003 of the learned J.M.F.C., Ponda, by which the accused was convicted for bouncing of a cheque dated 31.12.2001 for Rs.73,655/- and sentenced to SI for three months and to pay compensation of Rs.74,314/- and in default to pay the same, to undergo SI for a period of one month.

3. The only point raised in this revision is regards limitation contending that the subject cheque dated 31.12.2001 for Rs.73,655/- was issued towards the payment of a time barred debt.

4. As far as the facts go, there is no dispute that the Complainant had booked with the accused a Tipper Truck by depositing an amount of Rs.25,000/- on 02.12.1994. The accused had undertaken to pay interest thereon at the rate of 19% per annum till the truck was delivered. The truck was not delivered as promised. On 14.06.00, the accused gave a writing to the Complainant stating that he would try to settle the account of the Complainant in six to seven months. On 30.09.2001, the accused gave a signed statement and along with it, a cheque dated 30.09.2001 for a sum of Rs.72,455/-. In the said statement, the accused showed the said sum of Rs.72,455/- as payable. As per the request of the accused, the said cheque dated 30.09.2001 was not presented by the Complainant for encashment. On 31/12/2001 the accused gave another writing accompanied by a cheque in the sum of Rs.73,653/- dated 31.12.2001. The said writing showed that a sum oif Rs.73,653/- was payable. This cheque was also not deposited by the

Complainant for encashment, at the request of the accused. Thereafter, the subject cheque dated 01.03.2002, in the sum of Rs.74,413/-, came to be issued by the accused to the Complainant and which came to be dishonoured. Upon notice issued by the Complainant to the accused, the accused replied stating that his signed cheque was misplaced.

5. On behalf of both the parties, reliance has been placed on the case of ***Narendra V. Kanekar v. Bardez-Taluka Co-operative Housing Mortgage Society Ltd. (2006 (2) Goa L. R. 13).*** The contention of the learned Counsel on behalf of the accused is that the said statement of account given by the accused along with the cheque, cannot be considered to be a promise as contemplated by Section 25 of the Indian Contract Act, 1872. On the other hand, it is a submission of the learned Counsel, on behalf of the Complainant, that the said writing is nothing but a promise as contemplated by sub-Section (3) of Section 25 of the said Act.

6. The point of limitation was raised before the learned Sessions Judge but it is conceded by both parties that it was not rightly dealt with. This Court in the case of ***Narendra V. Kanekar v. Bardez-Taluka Co-operative Housing Mortgage Society Ltd.*** (supra), has dealt with the aspect of sub-section (3) of Section 25 of the Indian Contract Act, 1872, and has held that in terms of Section 25 (3) of the said Act, a written promise to pay furnishes a fresh cause of action.

This Court further held that what clause 3 of Section 25 of the said Act in substance does, is not to revive a dead right, for the right is never dead at any time but to resuscitate the remedy to enforce payment by suit and if the payment could be enforced by a suit, it means that it still has the character of legally enforceable debt, as contemplated by the explanation below Section 138 of the Act. This Court had referred to the Division Bench Judgment of the Kerala High Court in the case of ***Dr. K. K. Ramakrishnan v. Dr. K. K. Parthasaradhy & anr. (2005 (1) DCR 165)***, wherein it was held that a promise to pay in writing as per Section 25(3) of the Indian Contract Act, 1872, matures into an enforceable contract, which can be enforced by filing a Civil Suit. This Court therefore held that if a suit could be filed pursuant to a promise made in writing and signed by the person to be charged herewith, as contemplated under sub-section (3) of Section 25 of the Indian Contract Act, then the debt becomes legally enforceable and if a cheque is given in payment of such debt is dishonoured and subsequently if the statutory notice is not complied with, then the person making the promise in writing and issuing the cheque, would still be liable to be punished under Section 138 of the Act.

7. As already seen, in the case at hand, the accused gave written promises in writing on 30.09.2001 and 31.12.2001 showing the amount payable to the Complainant from time to time and the said promises in writing referred to herein above, were more than sufficient to keep the remedy of the Complainant alive to enforce the payment by suit. The plea of limitation raised on behalf of the

accused that the subject cheque was issued in payment of a time barred debt, is therefore, without merits and consequently the revision is liable to be dismissed.

8. The learned Counsel on behalf of both the parties submit that as on date, the accused is liable to pay to the Complainant a sum of Rs.74,413/-. It is submitted on behalf of the Complainant that if the accused pays a sum of Rs.40,000/- within 45 days, then the Complainant would be prepared to compound the offence under Section 138 of the Act, against the accused. The accused is, therefore, required to pay to the Complainant the sum of Rs.40,000/- within a period of 45 days from today. It is made clear that no extension either for part payment or payment of full amount will be granted to the accused. Upon failure of the accused to pay the said sum of Rs.40,000/- within a period of 45 days from today, the learned Magistrate will be at liberty to execute the sentence imposed. In case the payment is made as agreed upon, the offence shall stand compounded and the accused shall stand acquitted under Section 138 of the Negotiable Instruments Act, 1881.

9. Revision Petition stands disposed of accordingly.

N. A. BRITTO, J.

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